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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KARL E. RISINGER, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

SOC LLC, a Delaware limited liability company registered and doing business in Nevada as SOC NEVADA LLC; SOC-SMG, INC., a Nevada corporation; DAY & ZIMMERMAN, INC., a Maryland corporation; and DOES 1-20, inclusive,

Defendants.

Case No.: 2:12-cv-00063-MMD-PAL

JOINT STATUS REPORT

Defendants SOC LLC, SOC-SMG, INC and DAY & ZIMMERMANN, INC. and Plaintiff KARL E. RISINGER, by and through their attorneys of record, hereby submit the following Status Report following the Court's granting of Defendants' Motion for Decertification:

REFERRAL TO MAGISTRATE FOR SETTLEMENT

Plaintiff's Position: Plaintiff is amenable to engaging in a settlement conference before a magistrate judge and believes this should be done prior to setting any deadline for a joint pretrial order. Plaintiff would engage in these settlement discussions, not to resolve Mr. Risinger's individual claim, but to resolve class wide claims, proposed classes for settlement purposes or the claims of the survey respondents. In addition, Plaintiff intends to bring two motions: (1) a motion for relief under FRCP Rules 59 and 60 for reconsideration of the Court's order decertifying the class; and (2) a motion to certify a more limited class covering only certain bases where Plaintiff contends there is no dispute that Defendants' policy of understaffing was carried out. If these motions are not granted, Plaintiff intends to petition the Court to certify the decertification for appeal. If that petition is not granted, then plaintiff would file a petition before the 9th Circuit under FRCP 26(f) to grant review of the Court's decertification order. Accordingly, Plaintiff believes that setting a joint pretrial deadline would be premature at this time for all of these reasons.

It is ironic that Defendants' claim that they oppose any further delay of this matter when it was Defendants that appealed the original certification order (causing a delay of 3 years) and then withheld information about reclassified guards (resulting in further delay). The reality is that Plaintiff obtained class certification efficiently and judicially, while Defendants did everything they could to retry this matter post-certification. While Defendants ultimately succeeded in decertifying the class, Plaintiff should not be precluded from seeking to certify a more limited class as it did not have a prior opportunity to do so having its initial certification motion granted and affirmed on appeal. No further discovery is needed to bring such a motion as Plaintiff would be seeking to certify a class limited to certain bases where discovery has already been conducted. It would be a miscarriage of justify to deny Plaintiff this opportunity where there is no dispute

that numerous employees of Defendants were defrauded and impermissibly overworked based on a policy that violated the Guard employment contracts, but also Defendants' contract with the Department of Defense. No prejudice would befall Defendants' from having to respond to a new motion for class certification except time, which, if a proper basis, then Defendants should not have been able to bring its motion to decertify.

Defendants' Position: Referral to the magistrate for settlement of purported class claims would be futile because there is no class with which Defendants could settle even if they were inclined to do so (which they are not). Even a settling class must satisfy the Rule 23 requirements that this Court has now held Plaintiff's failed class simply does not meet. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 593 (1997). Any settlement discussions would therefore only waste both parties' resources.[1]

The Court should therefore set a joint pretrial deadline and a date for trial on the only claims remaining in this case: those asserted individually by Mr. Risinger. Defendants oppose any effort to further delay resolution of this case only to permit Plaintiff's counsel to pursue a pointless appeal or to raise meritless arguments that they could have, and should have, made long ago. Appeal would be futile because this Court has broad discretion and made no error. As to reconsideration, there is no new evidence or law to justify it. Further, Plaintiff should not be permitted to even ***file*** a motion now to certify ***a different class*** from the one that the parties have been litigating for nearly eight years. Defendants will undoubtedly be heavily prejudiced by starting this case over as Plaintiff apparently intends; his effort to certify a different class now would require amending the case schedule to permit amendments to the complaint and to reopen class discovery. The case schedule's motions deadlines would also need to be amended because any new certification motion is already over four years late. ECF No. 77, Scheduling Order, at 5 ("Last date to file a motion to certify a class: **November 8, 2014."**) (emphasis in original); *see also* ECF No. 345, Pl.'s Mot. to Strike, at 4 ("Since the November 8, 2014 deadline … lapsed

[1] Defendants would be willing to participate in a conference solely to discuss settling Mr. Risinger's individual claims. However, given Plaintiff is not open to an individual settlement, referral for that purpose would also be fruitless.

more than four years ago, Defendants' new Motion … should be stricken."). Further, even if there were no deadline, "Plaintiff[] must show some justification for filing a second [certification] motion, and not simply a desire to have a second or third run at the same issues." *Hartman v. United Bank Card, Inc.*, 291 F.R.D. 591, 597 (W.D. Wash. 2013). This, Plaintiff's counsel cannot do. At the absolute latest, the time for them to argue for a different class was in opposition to Defendants' motion to decertify, not in response to that motion being granted. Finally, Plaintiff's motion would be as meritless in substance as any reconsideration motion. Among other things, it is not true that Plaintiff's allegations regarding an understaffing policy are undisputed as to certain sites; Defendants strenuously dispute that there was any such policy at all, and even if there had been, this Court has already held it would not support certification across even a single location like LBS. If permitted, Plaintiff's motion would only waste the time and resources of this Court and the parties.

Dated: August 1, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filling to the Electronic Service List for this Case.

I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct.

/s/ D'Metria Bolden

D'METRIA BOLDEN
An Employee of EARLY SULLIVAN
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